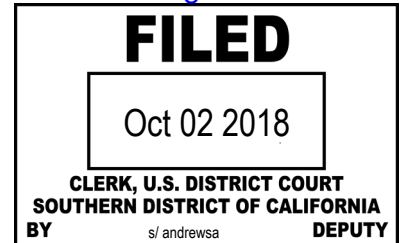


Doyle Wayne Davis, H-34318/B-8-109 Lower
Richard J. Donovan Correctional Facility
480 Alta Road
San Diego, California 92179
In Propria Persona



NUNC PRO TUNC

09/27/2018

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Doyle Wayne Davis,	)	CASE NO.: <u>3:16-cv-00689-WQH-(JMA)</u>
Plaintiff,	)	PLAINTIFFS' MOTION FOR VOLUNTARY
	)	DISMISSAL OF CIVIL ACTION PRIOR
VS.	)	TO TRIAL; MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT THEREOF.
Daniel Paramo, Warden, et al.,)	
)	
<u>Defendant(s).</u>	)	[Code of Civil Procedure, rule ¶581(b)(1)]

Plaintiff, Doyle Wayne Davis, filed his civil rights action due to the ongoing deliberate indifference he had to suffer at the hands of the herein named defendants. To the best of his limited ability, plaintiff prosecuted his civil action in a timely manner.

However, due to the incompetent medical treatment plaintiff did have inflicted upon him, he suffered over 300 heart episodes which were documented by his in situ pacemaker.

Plaintiffs' health continued to fail and his ability to do the most simple task became harder and harder. Plaintiff informed the Court of this condition in multiple motion(s) for appointment of counsel. (See Exhibit A, Hereto)

The Court responded with concern for plaintiffs' health each time, however, it continued to deny plaintiff legal assistance in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff, upon finally obtaining his discovery, which the Court and the defendants counsel ensured was as difficult as possible to obtain, plaintiff filed his First Amended Complaint. The Court and the defendants' counsel had been placed on Notice, from the beginning of this civil action, that plaintiff would file a First Amended Complaint once the defendants complied with discovery.

As plaintiff knew would transpire, the Court for no logical nor lawful reason, denied plaintiff the right to file his First Amended Complaint. Plaintiff does not believe that the denial was for the stated reason(s) in the Court's Order, but, because from the first appearance of the defendants' counsel, the deputy attorney general has dictated to this Court, that the real parties in this action, are only Defendant J. Silva, and S. Pasha, and therefore, all other defendants should be dismissed. To which the Court has accommodated the defendants' counsel in every way possible.

Once the Court denied plaintiffs' request for filing of his First Amended Complaint, the defendants filed their dispositive motion which the Court encouraged them to file. That motion and/or set of documents is currently pending in the Court awaiting plaintiff to respond on or before September 10, 2018.

Argument

When plaintiff expressed his inability, physical inability to continue to prosecute his civil rights action in this matter the Court denied each of his requests for appointment of counsel by stating that plaintiff had the ability to continue on his own behalf.

The court stated in it's denial: "The alleged continued deterioration of Plaintiff's health does not alter the Court's analysis." "The facts alleged in the complaint are not complex and Plaintiff has demonstrated an ability to articulate the factual and legal bases of his claims with sufficient clarity and to litigate his claim on his own behalf." [Doc. 95]. Again, plaintiff has never stated he lacked the ability to prosecute his civil action, only that his physical condition was becoming such, after five heart surgeries and over 300 heart episodes, that he could not physically do the work, the research, the battle that was required to get into the institution law library, while still fighting the inept medical care he was receiving. It is just physically impossible for plaintiff to do on his own. Likewise, plaintiff does not have the physical ability to respond to the current pending dispositive motion filed by the defendants in this matter.

There is nothing inherent in a motion to enforce settlement pursuant to CCP §664.6 that would render any particular outcome inevitable, or a mere formality, simply because a plaintiff failed to file opposition. Outside of the unique summary judgment context in one particular appellate case, no case is known holding that a failure to file an opposition terminates a plaintiff's right to dismiss under CCP §581 and, indeed, it appears that in the absence of special circumstances indicating an adverse judgment is a foregone conclusion, the general rule is that a party may obtain a voluntary dismissal at any time prior to a ruling, or something tantamount thereto (i.e., a formal and public indication of the merits), on the dispositive motion. Lewis C. Nelson & Sons Inc., v. Lynx Iron Corp., (Cal.App.5th Dist May 21, 2009) 174 Cal.App.4th 67, 94 Cal.Rptr.3d 468, 2009 Cal.App. LEXIS 807.

According to CCP §581:

§581 Dismissal of action or complaint by parties or court

(c) A plaintiff may dismiss his or her complaint, or any cause of action asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice prior to the actual commencement of trial.

(b) An action may be dismissed in any of the following instances:


(1) With or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of the costs, if any.

As noted in the herein moving papers, the civil action herein has not been to trial, nor an order issued dealing with the pending dispositive motion by defendants counsel, and therefore, this motion to dismiss by means of voluntary dismissal is timely and properly filed with the Clerk of the Court and the Court.

CONCLUSION

Based on the Notice of Motion and Motion to Voluntary Dismiss this Civil Action in it's entirety is based on plaintiffs' failing health and his physical inability to prosecute his legal action. As a matter of right, plaintiff hereby motions this Court to enter a Voluntary Dismissal without prejudice in this civil action for the plaintiff, even though he is unable to respond to the pending motion to dismiss via Summary Judgment by the defendants.

Dated: September 2, 2018 Respectfully submitted,


Doyle Wayne Davis, H-34318
In Propria Persona

Doyle Wayne Davis, H-34318/B-8-109 Lower
Richard J. Donovan Correctional Facility
480 Alta Road
San Diego, California 92179
In Propria Persona

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Doyle Wayne Davis,

Plaintiff,

VS.

Daniel Paramo, Warden, et al.,

Defendant(s).

CASE NO.: 3:16-cv-00689-WQH-(JMA)

PROOF OF SERVICE BY
FIRST CLASS POSTAGE

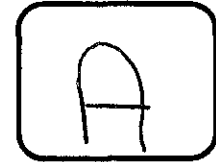
I hereby certify that on September 9th, 2018, I served a copy of the hereto attached Notice Of Motion and Motion For Voluntary Dismissal Of Plaintiff's Entire Civil Action, by placing a copy in a postage paid envelope in the United States Mail, at Richard J. Donovan Corr. Facility, San Diego, Ca. 92179, addressed as follows:

Christopher H. Findley
Deputy Attorney General
Office of the Attorney General
600 W. Broadway, Suite 1800
Post Office Box 85266
San Diego, California 92186-5266

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 9th, 2018, at Richard J. Donovan Correctional Facility, San Diego, Ca.

Doyle Wayne Davis
Doyle Wayne Davis, H-34318/B-8-109 Low
In Propria Persona

EXHIBIT COVER PAGE



EXHIBIT

Description if this exhibit: *Patient Discharge Instructions*
Dated August 30, 2018 09:51

Number of Pages to this exhibit: 1 Pages.

JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☐ SUPERIOR COURT
- ☐ APPELATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

California Correctional Health Care Services

Patient Discharge Instructions

Name: DAVIS, DOYLE Current Date: 08/30/18 09:51:16

DOB: 06/25/57 CDCR: H34318

Reason For Visit: 1:Heart failure; 2:Atrial fibrillation; 3:Biventricular cardiac pacemaker in situ; 4:S/P skin biopsy; 5:Rash

Recommendations and arrangements for future care

Devices/Equipment:

Wheelchair, Other: special boots and knee braceAnkle Foot/Knee Ankle Foot Orthoses (AFO/KAFO)

Permanent Ankle Foot Orthosis, Routine - Within 90 Calendar Days

Braces, Knee Permanent Elastic Knee Brace, Do Not Dispense, Patient Already Has

DME Nonformulary Expedited - Within 5 Calendar Days, 01/19/18 0:01:00 PST, 01/19/18 0:01:00 PST, Hibiclens 3 bottles per month

Frames, Eyeglasses Permanent Other/Unknown, Do Not Dispense, Patient Already Has

Therapeutic Shoes/Orthotics Permanent orthopedic shoes, Expedited - Within 5 Calendar Days

Wheelchair Permanent Standard Hemi-Wheelchair, High Priority - Within 14 Calendar Days

Wheelchair Supply 04/04/18 0:01:00 PDT, Gloves, Routine - Within 90 Calendar Days, size XL, Constant Indicator

Wheelchair Supply 04/04/18 0:01:00 PDT, Seat Cushion, Routine - Within 90 Calendar Days, standard, formulary, egg crate cushion., Constant Indicator

Provider Comment:

MEDICATIONS:

During the course of your visit your medication list was updated with the most current information.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Doyle Wayne Davis,

Plaintiff,

VS.

Daniel Paramo, Warden, et al.,

Defendant(s).

CASE NO.: 3:16-cv-00689-WQH-(JMA)

PETITIONERS' NOTICE OF MOTION AND MOTION
FOR VOLUNTARY DISMISSAL OF CIVIL ACTION

Doyle Wayne Davis, H-34318/B-8-109 Lower
Richard J. Donovan Correctional Facility
480 Alta Road
San Diego, California 92179
In Propria Persona

Doyle Wayne Davis, H-34318/B-8-109 Lower
Richard J. Donovan Correctional Facility
480 Alta Road
San Diego, California 92179
In Propria Persona

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Doyle Wayne Davis,	)	CASE NO.: <u>3:16-cv-00689-WQH-(JMA)</u>
Plaintiff,	)	PLAINTIFFS' NOTICE OF MOTION AND
	)	MOTION FOR VOLUNTARY DISMISSAL
VS.	)	OF CIVIL ACTION PRIOR TO TRIAL.
Daniel Paramo, Warden, et al.,)	
)	
<u>Defendant(s).</u>	)	[Code of Civil Procedure, §581(b)(1)]

TO J. SILVA, and S. PASHA, Defendants, and/or their counsel:

PLEASE TAKE NOTICE that on October 1, 2018, at 0900 a.m., or as soon thereafter as may be heard by the above-entitled Court, at the Schwartz United States Courthouse, 221 West Broadway, San Diego, Ca., Plaintiff, DOYLE WAYNE DAVIS, a pro se inmate in State custody, will and hereby does, move for a voluntary dismissal of this entire civil action prior to trial on these matters, on the grounds of plaintiffs' failing health and his physical inability to further prosecute in a timely manner the above-entitled civil action. Plaintiff has requested on multiple dates, appointment of counsel to assist him, which all requests have been denied by the Court. The Court has stated that plaintiff has demonstrated the capacity to prosecute his civil action.

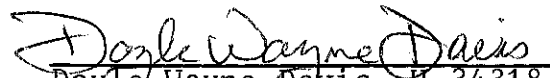
Those requests were never about plaintiffs' ability nor inability to prosecute the action, the requests were made due to plaintiffs' severe failing health and having suffered over 300 heart episodes

and multiple heart surgeries in a period of less than 100 days, due to the inept and deliberate indifferent medical care plaintiff has/is receiving at the hands of defendants. Plaintiff no longer possesses the physical ability to continue to adequately prosecute his civil rights action on his own behalf.

Plaintiffs' Motion is based on his Notice of Motion, Memorandum of Points and Authorities in support thereof, as well as the documents on file with the clerk of the court and files in this action.

Dated: September 2, 2018

Respectfully submitted,


Doyle Wayne Davis, H-34318
In Propria Persona

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Doyle Wayne Davis, declare:

I am over 18 years of age and a party to this action. I am a resident of R.J.D.C.F.

Institution Prison,

in the county of San Diego,

State of California. My prison address is: Doyle Wayne Davis, H-34318/B-8-109 low

R.J.D.C.F. 480 Alta Road, San Diego, Ca. 92179

On September 24, 2018,
(DATE)

I served the attached: Re-Filing of Notice of Motion, Motion for
Voluntary Dismissal of Civil Action
(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

Christopher H. Fiedler
Deputy Attorney General
Office of the Attorney General
600 W. Broadway, Suite 1800
P.O. Box 5266
San Diego, Ca. 92186-5266

I declare under penalty of perjury under the laws of the United States of America that the foregoing

is true and correct.

Executed on 9-24-2018
(DATE)

Doyle Wayne Davis
(DECLARANT'S SIGNATURE)

Exhibit "A"

No COPY(S) AVAILABLE
AT DATE OF Posting

Envelope From Superior Court
Dated 9-17-2018

original To Court, Santa Clara District
Delivered to Plaintiff AT Alvarado
Hospital on 9-21-2018

Exhibit "B"
No Copy(s) Available
At Date of Posting

Court Notice
Dated 9-17-2018
Original to Court, Southern District of
Delivered to Plaintiff at Alameda
Hospital on 9-21-2018

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

- ☒ CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101, (619) 450-7275 (CIVIL) (619) 450-7276 (UNLAWFUL DETAINER)
- ☐ CENTRAL DIVISION, FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101
- ☐ CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101
- ☐ CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123, (858) 634-1919
- ☐ EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020, 619-456-4100
- ☐ EAST COUNTY DIVISION, RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065, (760) 738-2435
- ☐ NORTH COUNTY DIVISION, 325 S. MELROSE DR., SUITE 1000, VISTA, CA 92081, (760) 201-8600
- ☐ SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910, (619) 746-6200

Case Number: _____

The attached Paperwork is being returned for the reason(s) indicated below.

- ☐ \$ _____ fee is required for _____.
- ☐ Case number is ☐ incorrect ☐ missing ☐ not this court's jurisdiction.
- ☐ Form is incomplete; see highlighted area(s).
- ☐ Document / Check is not ☐ dated ☐ signed.
- ☐ Original signature(s) are required.
- ☐ Documents are not legible. If not typed, forms must be legibly printed in black or blue-black ink. (Cal. Rules of Court, rule 2.106)
- ☐ Your pleading is not in compliance with Cal. Rules of Court, Division 2 Chapter 1. Documents must be submitted on 8 1/2" X 11" paper and must be two-hole punched at the top.
- ☐ Each document filed by a fax filing agency shall contain the phrase "By Fax" immediately below the title of the document. (Cal. Rules of Court, rule 2.303)
- ☐ The first page of the pleading must specify immediately below the case number: the hearing date, time, department, name of the hearing judge if ascertainable, and trial date if assigned. (Cal. Rules of Court, rule 3.1110)
- ☐ Summons must match the Complaint / Cross-complaint exactly.
- ☐ Complaint / Summons indicates another court location; file in appropriate court.
- ☐ In a Petition for Appointment of Guardian Ad Litem, if the minor is 14 years of age or older, the minor must be the petitioner or consent to the appointment of the Guardian Ad Litem. (Code Civ. Pro. § 373)
- ☐ Guardian Ad Litem cannot be a party to the action, absent a court order. (SDSC Local Rule, 2.4.6)
- ☐ A Petition for Appointment of Guardian Ad Litem must be filed at the same time as, and as a separate document from, the underlying complaint. (SDSC Local Rule, 2.4.6)
- ☒ Other: The attached paperwork looks to be for a different court. The address this was sent to was for Superior Court and the case number provided on the document is not ours. As a courtesy we are mailing this back.

Please return this form when you resubmit your document(s) and enclose a self-addressed envelope large enough for all documents, stamped with sufficient postage.

Clerk of the Superior Court

Date: 9/17/18by [Signature], Deputy

☐ Check(s) returned Returned to ☐ Plaintiff ☐ Defendant ☒ Attorney via: Court Mail

9-24-2018

Clerk of The Court
U.S.D.C.
Southern District of Ca.
333 W. Broadway, Suite 420
San Diego, Ca. 92101

RE: RE-Filing of Voluntary Dismissal of Civil Action.
Case No.: 3:16-cv-00689-WQH-JMA

Dear Clerk:

I served the heren Notice of Motion, And Motion for A Voluntary Dismissal of the above civil action. A copy was served upon defendants counsel. All of that service took place on 9-9-2018.

On 9-18-2018 I was sent to Sharp Chula Vista Hospital due to heart failure. Once I was able to transfer I was then transported via ambulance to Alvarado medical Center. I was directly admitted to that hospital for treatment of the heart failure.

On 9-21-2018 I received legal mail in the form of return of the Notice of Motion and motion To Dismiss which were filed to the U.S.D.C. Southern District on 9-9-2018. (See Original Proof of Service) The Clerk of the Superior Court stated those documents arrived at the Superior Court, for some reason.

On 9-24-2018 my health was stable enough to release me back to the prison after (7) seven days of intensive treatment. Therefore, please file the heren Notice of Motion and motion for Voluntary Dismissal, Noce pro tunc to 9-9-2018.

Respectfully,

Dayle Wayne Davis
Dayle Wayne Davis

DW Davis #34315/B-8-107L
R.D.C.F.
480 Alta Road
San Diego, Ca 92179
20 Paper Return

Deputy
Hagler (mod) DIRECTOR
USPS 0011 \$01.63
ZIP 92179
011111548136



Clark of the Court
ATTN: U.S. DC
Southern District of Ca.
Office of the Clerk
333 West Broadway, Suite 420
San Diego, Ca. 92101

Confidential
Legal Mail

California Department of
Corrections and Rehabilitation

